

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

McKENZIE DRYWALL FINISHERS CORP.

and

**Case Nos. 29-CA-27336
29-CA-27351**

**LOCAL 52, UNITED BROTHERHOOD OF
CARPENTERS & JOINERS OF AMERICA**

Richard Bock, Esq., Counsel for the General Counsel.
Robert McKenzie, President, for the Respondent.

DECISION

Statement of the Case

JOEL P. BIBLOWITZ, Administrative Law Judge: This case was heard by me on August 30, 2006 in Brooklyn, New York. The Consolidated Complaint herein, which issued on May 31, 2006, and was based upon unfair labor practice charges that were filed on December 21, 2005¹ and January 5, 2006 by Local 52, United Brotherhood of Carpenters & Joiners of America, herein called Local 52, alleges that on about December 19, at three different job sites on which it was operating, McKenzie Drywall Finishers Corp., herein called the Respondent, conditioned employees' continued employment on their agreeing to join Drywall Tapers & Pointers of Greater New York, Local 1974 of I.U.P.A.T., AFL-CIO, herein called Local 1974, and failed to provide said employees with the seven day statutory grace period to do so. The Consolidated Complaint further alleges that on December 19, the Respondent terminated employees Cesar DaSilva, Peter Day and Clarence Richardson because they were members of Local 52, rather than Local 1974, and because they engaged in protected concerted activities and to discourage employees from engaging in these activities, in violation of Section 8(a)(1)(3) of the Act. Upon receiving no Answer to the Consolidated Complaint herein, on June 19, 2006 the region issued an Order Extending Time to Answer to July 17, 2006. However, Respondent still did not file an Answer to the Consolidated Complaint. In the absence of an Answer to the Consolidated Complaint, Counsel for the General Counsel made a Motion for Default Judgment at the hearing, which I granted. I therefore make the following findings of fact and conclusions of law:

1. The charge in Case No. 29-CA-27336 was filed by Local 52 on December 21, 2005 and served upon Respondent by regular mail on January 3, 2006.

2. The charge in Case No. 29-CA-27351 was filed by Local 52 on January 5, 2006, and was served upon Respondent by regular mail on January 10, 2006.

3. At all material times, Respondent, a domestic corporation with its principal office and place of business located at 930 Thierot Ave., Bronx, New York, herein called the Bronx facility, has been engaged in the building and construction industry as a dry wall finishing contractor.

¹ Unless indicated otherwise, all dates referred to herein relate to the year 2005.

4. During the past 12 months, which period is representative of its annual operations generally, Respondent, in the course and conduct of its business operations described above in paragraph 3, purchased and received at its Bronx facility, goods and supplies valued in excess of \$50,000 directly from suppliers located outside the State of New York.

5. At all material times Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

6. At all material times Local 52 has been a labor organization within the meaning of Section 2(5) of the Act.

7. At all material times Local 1974 has been a labor organization within the meaning of Section 2(5) of the Act.

8. At all material times the following individuals have held the positions set forth next to their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act, and/or agents of Respondent acting on its behalf:

Brandon Clear	Foreman
Julio Meija	Foreman
Julio LNU	Foreman
Xerches Freschiani	CEO

9. On or about December 19, 2005, Respondent, by its agents Clear and Freschiani, at a construction jobsite located at 8th Avenue and 57th Street, New York, New York, conditioned employees' continued employment on their agreeing to join Local 1974, and failed to provide said employees with the seven day statutory grace period to do so.

10. On or about December 19, 2005, Respondent, by its agent Meija, at a construction jobsite located at 10 Hanover Street, New York, New York, conditioned employees' continued employment on their agreeing to join Local 1974, and failed to provide said employees with the seven day statutory grace period to do so.

11. On or about December 19, 2005, Respondent, by its agents Julio LNU and Freschiani, at a construction jobsite located at 145 Park Place, Brooklyn, New York, conditioned employees' continued employment on their agreeing to join Local 1974, and failed to provide said employees with the seven day statutory grace period to do so.

12. On or about December 19, 2005, Respondent terminated employees Cesar DaSilva, Peter Dey and Clarence Richardson.

13. Since on or about December 19, 2005, Respondent has failed and refused to reinstate DaSilva, Dey or Richardson to their former positions of employment.

14. Respondent engaged in the conduct described above in paragraphs 12 and 13 because said individuals were members of Local 52, because they were not members of Local 1974, and because they engaged in protected concerted activities, and to discourage employees from engaging in these activities.

15. By the conduct described above in paragraphs 9 through 11, Respondent has been interfering with, restraining and coercing its employees in the exercise of rights guaranteed in

Section 7 of the Act in violation of Section 8(a)(1) of the Act.

16. By the conduct described above in paragraphs 12 through 14, Respondent has been discriminating in regard to the hire and tenure and terms and conditions of employment of its employees, thereby discouraging membership in one labor organization and encouraging membership in another labor organization, in violation of Section 8(a)(1) and (3) of the Act.

17. The unfair labor practices of Respondent, described above, affect commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I recommend that it be ordered to cease and desist from engaging in these activities and that it be ordered to take certain affirmative action designed to effectuate the policies of the Act. As the Respondent unlawfully terminated Cesar DaSilva, Peter Dey and Clarence Richardson, it must offer them reinstatement to their former positions of employment, or if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings or other benefits that they suffered due to the discrimination, to be computed on a quarterly basis from the date of their discharges to the date when Respondent makes a valid reinstatement offer, less any interim earnings, as prescribed by *F.W. Woolworth*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

ORDER

The Respondent, McKenzie Drywall Finishers Corp., its officers, agents, successors and assigns, shall:

1. Cease and desist from

(a) Conditioning employees' continued employment on their agreeing to join Local 1794, and failing to provide the employees with the seven day grace period to do so.

(b) Terminating, or otherwise discriminating against its employees, because they were not members of Local 1974, because they engaged in protected concerted activities, and to discourage employees from engaging in such activities.

(c) In any like or related manner interfering with, restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act:

² If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Within 14 days of the date of this Order, offer DaSilva, Dey and Richardson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them in the manner set forth in the remedy section of this decision.

(b) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharges, and within 3 days thereafter notify the employees in writing that this has been done and that the discharges will not be used against them in any way.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Bronx, New York and at all of its jobsites, copies of the attached notice marked "Appendix."³ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 19, 2005.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C., September 14, 2006.

Joel P. Biblowitz
Administrative Law Judge

³ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES

**Posted by Order of the
National Labor Relations Board
An Agency of the United States Government**

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT condition our employees' continued employment on their agreeing to join Drywall Tapers & Pointers of Greater New York, Local 1974 of I.U.P.A.T., AFL-CIO ("Local 1974") and **WE WILL NOT** fail to provide our employees with the seven day statutory grace period to do so.

WE WILL NOT discharge, or otherwise discriminate against our employees, because they were not members of Local 1974, and because they engaged in protected concerted activities, and to discourage other employees from engaging in these activities.

WE WILL NOT in any like or related manner interfere with, restrain or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, within 14 days of the Board's Order herein, offer Cesar DaSilva, Peter Dey and Clarence Richardson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges previously enjoyed, and **WE WILL** make them whole for any loss of earnings and other benefits that they suffered as a result of the discrimination against them.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharges of DaSilva, Dey and Richardson, and **WE WILL**, within 3 days thereafter, notify each of them in writing that this has been done and that the discharges will not be used against them in any way.

McKENZIE DRYWALL FINISHERS CORP.
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlr.gov.

One MetroTech Center (North), Jay Street and Myrtle Avenue, 10th Floor

Brooklyn, New York 11201-4201

Hours: 9 a.m. to 5:30 p.m.

718-330-7713.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.